APPENDIX "A"

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1962

No. 19,576

(MAIN APPEAL)

UNITED STATES OF AMERICA,
Appellant,

vs.

THERON C. LYND, CIRCUIT CLERK AND REGISTRAR OF VOTERS OF FORREST COUNTY, STATE OF MISSISSIPPI; STATE OF MISSISSIPPI,
Appellees.

Appeal from the United States District Court for the Southern District of Mississippi

Before BROWN, WISDOM and BELL, Circuit Judges.

Judgment and Mandate

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was taken under submission by the Court upon the record and briefs on file, counsel for the parties having waived oral argument;

ON CONSIDERATION WHEREOF, It is now here ORDERED, ADJUDGED, AND DECREED by this Court

that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court; and

It is FURTHER ORDERED, ADJUDGED, AND DECREED that until such time as the District Court for the Southern District of Mississippi finally disposes of this cause, the injunction orders heretofore issued on April 10, 1962 and April 16, 1962, shall be, and hereby are continued in full force and effect, the terms and provisions thereof being that:

> The defendants, their agents, employees, successors, and all persons in concert with them are hereby enjoined from engaging in discriminatory acts and practices based on race in the registration for voting in Forrest County, Mississippi, and they are expressly enjoined from:
>
> (1) Denying Negro applicants the right to make application for registration on the same basis as white applicants;
>
> (2) Failing to process applications for registrations submitted by Negro applicants on the same basis as applications submitted by white applicants;
>
> (3) Failing to register and to issue registration cards to Negro applicants on the same basis as white applicants;
>
> (4) Denying Negro applicants the right to be registered by the same office personnel and with the same expedition and convenience as are being permitted to white applicants, and from failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are

now or heretofore have given to white applicants under similar circumstances;

(5) From administering the constitutional interpretation test to Negro applicants by including as sections to be read and interpreted any sections other than those which at the time of the trial had been used for submission to white applicants;

(6) From requiring rejected Negro applicants to wait any different period before reapplying for registration than may be authorized under the laws of Mississippi and other than is required of white applicants.

This judgment and mandate, continuing said prior orders, shall be effective immediately and shall be transmitted forthwith to the Clerk of the District Court for the Southern District of Mississippi, and certified copies thereof shall be sent forthwith by the Clerk of this Court to each party; said service to be made upon counsel of record.

Entered and Issued: July 15, 1963

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By /s/ G. F. Ganucheau
(Seal) Deputy

New Orleans, Louisiana JUL 15 1963

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, Petitioner, vs. THERON C. LYND, CIRCUIT CLERK AND REGISTRAR OF VOTERS OF FORREST COUNTY, STATE OF MISSISSIPPI, Respondent.	**Civil No. 19,576 (Civil Contempt)**

Judgment and Order of Civil Contempt

Before BROWN, WISDOM and BELL, Circuit Judges.

Pursuant to the findings of fact, conclusions of law entered this date;

1. It is ADJUDGED that Theron C. Lynd, respondent, is guilty of civil contempt of this Court for violating, after notice and service thereof on April 18, 1962, the orders of this Court of April 10, 1962 and April 16, 1962.

2. It is further ORDERED and ADJUDGED that Theron C. Lynd perform and continue to perform and instructs his deputy registrar and other agents or employees who perform any administrative or other duty in connection with the registration of voters in Forrest County, Mississippi, to perform and continue to perform the following:

a. place upon the current voter registration rolls of Forrest County, Mississippi, and to do all other acts necessary to complete the registration for voting in Forrest County of the following Negro citizens who applied for and were illegally denied registration in Forrest County, Mississippi, including sending to such Negro citizens by United States mail postage prepaid, registration cards ordinarily used in Forrest County identifying such citizens as registered voters in Forrest County; such registration to be effective in all respects and for all purposes as of the date of the most recent application of the respective citizens:

Constance J. Baker
402 Dumas Avenue
Hattiesburg, Mississippi

John M. Barnes
200 E. 5th Street
Hattiesburg, Mississippi

Kenneth George Beard
Kelley Settlement
Forrest County, Mississippi

Gloria Maxine Bivins
202 Ashford Street
Hattiesburg, Mississippi

Earline Boyd
202 Ashford Street
Hattiesburg, Mississippi

Rev. John Wesley Brown
Brooklyn, Mississippi

Alfonso M. Clark
510 E. 6th Street
Hattiesburg, Mississippi

James Avon Cohen
Palmer Crossing
Forrest County, Mississippi

Harold C. Dahmer
Forrest County, Mississippi

Vernon F. Dahmer
Forrest County, Mississippi

Thomas Davis
189 Fredna Avenue
Hattiesburg Mississippi

Mrs. Ollie Josephine Doss
Palmers Crossing
Forrest County, Mississippi

Jackson Gibson
817 Atlanta Street
Hattiesburg, Mississippi

Victoria Jackson Gray
Palmers Crossing
Forrest County, Mississippi

George G. Harper
820 Atlanta Street
Hattiesburg, Mississippi

John Henry
Palmers Crossing
Forrest County, Mississippi

Bennie Hines
Palmers Crossing
Forrest County, Mississippi

Catherine Jackson
Palmers Crossing
Forrest County, Mississippi

Sherman Earl Jackson, Sr.
526 E. 9th Street
Hattiesburg, Mississippi

Rev. Sam Hall
1212 Putman
Hattiesburg, Mississippi

Annie Mae James
5001 Ruby Avenue
Hattiesburg, Mississippi

Arthur James
500 1/2 Ruby Avenue
Hattiesburg, Mississippi

Jimmie James, Jr.
Palmers Crossing
Forrest County, Mississippi

Rev. Dewey Johnson
1008 Franklin Street
Hattiesburg, Mississippi

George Kelly
Eatonville
Forrest County, Mississippi

Robert Lynwood Lewis
308 Scoobo Street
Hattiesburg, Mississippi

Clarence E. Magee
1214 HallAvenue
Hattiesburg, Mississippi

Carrie Mae Magee
1214 Hall Avenue
Hattiesburg, Mississippi

Hattie Pearl Moore
Airport Inn
Forrest County, Mississippi

Patricia Louise Perryman
611 Highland Avenue
Hattiesburg, Mississippi

Annie Kathryn Pool
320 Scooba Street
Hattiesburg, Mississippi

Leonard Preston Ponder
Forrest County, Mississippi

David E. Roberson
805 Dobbs Street
Hattiesburg, Mississippi

Edna Ruth Ross
208 Barry Street
Hattiesburg, Mississippi

Ira Sandifer
511 New Orleans Street
Hattiesburg, Mississippi

Jesse Lenon Stegall, Sr.
320 Scooba Street
Hattiesburg, Mississippi

Bettie Jean Stepps
Forrest County, Mississippi

Wayne Sutton
308 Pauline Avenue
Hattiesburg, Mississippi

Willie Thigpen
900 John Street
Hattiesburg, Mississippi

Theodor F. Williams
Palmers Crossing
Forrest County, Mississippi

Andrew Wilson
207 Ruby Avenue
Hattiesburg, Mississippi

Gladys Woods
100 Coleman Avenue
Hattiesburg, Mississippi

Willie J. Woods
100 Colman Avenue
Hattiesburg, Mississippi

b. to cease requiring Negro applicants for registration, in completing the sworn written application to read, write, or interpret any section of the Mississippi Constitution any more difficult or stringent than those sections or provisions of that Constitution which white applicants for registration ordinarily

and customarily receive; and in any event none other than those given solely to white applicants between November, 1960 and March 5, 1962, such as:

Section 118
Section 128
Section 139
Section 14
Section 116
Section 226
Section 135
Section 125
Section 13
Section 70
Section 10
Section 16
Section 258
Section 273

c. to cease rejecting the applications of Negro applicants and to cease denying registration of Negro applicants on the grounds that they made errors or omissions on their application forms, if the applicant meets the following substantive qualifications:

(1) that he is 21 years of age or older;

(2) that he is a citizen of the United States and a resident of Mississippi;

(3) that he has resided in the State of Mississippi for two years and in his election district for one year, unless exempted from such requirement under Mississippi law;

(4) that he has not been convicted of one or more of the disqualifying crimes enumerated in Section 241 of the Mississippi Constitution;

(5) that he is not an idiot or an insane person;

(6) that he can read and write and reasonably interpret one of the sections of the Mississippi Constitution referred to in paragraph 2(b) of this Judgment and Order and demonstrate an understanding of the duties and obligations of citizenship;

(7) that he supports the Constitution of the United States and the State of Mississippi and will bear true faith and allegiance to the same.

and if any such applicant's application form does not reflect that he or she possesses any one or more of the above qualifications, to notify such applicant of the specific deficiency or deficiencies and afford such applicant the opportunity to correct the error or omission and to supply the needed information with respect to the above qualifications. Said opportunity to correct the deficiency is to be at the time the applicant executes the sworn written application.

d. permit the Attorney General of the United States or his authorized representative to inspect, copy, and photograph any or all registration records in the custody, possession or control of the office of the Circuit Clerk of Forrest County, Mississippi, at any and all reasonable times during regular office hours

3. It is further ORDERED and ADJUDGED that Theron C. Lynd, in order to purge himself of civil contempt of this Court, shall take the following steps:

a. Within 10 days of the date of this Order and Judgment, perform and comply with paragraph 2(a) of this Judgment; and

b. Within 5 days thereafter file with the Clerk of this Court his written signed statement showing that (i)

he has complied with the foregoing item 3(a) and that (ii) he will faithfully abide by and comply with this Judgment, the Orders of this Court heretofore served on him on April 14 and 18, 1962; and failing such compliance Theron C. Lynd shall be committed to and remain in the custody of the Attorney General for imprisonment until compliance and performance is effected. Filing of this statement under (ii) and compliance therewith shall not restrict or abridge the right of Theron C. Lynd to appeal from the Judgments or Orders therein enumerated or to contest the validity thereof in a Court of appropriate jurisdiction.

4. It is further ORDERED and ADJUDGED that all costs taxable under the statutes of the United States as court costs are hereby taxed against Theron C. Lynd.

5. Until such time as the Orders of this Court served on Theron C. Lynd on April 14 and 18, 1962, and any extension or continuation thereof shall expire by the terms thereof, this civil contempt cause shall remain on the dockets of this Court subject to the further orders of this Court.

Entered the 15th day of July, 1963.

/s/ John R. Brown
United States Circuit Judge

/s/ John Minor Wisdom
United States Circuit Judge

/s/ Griffin B. Bell
United States Circuit Judge

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By /s/ G. F. Gahucheau
(Seal) Deputy

New Orleans, Louisiana, JUL 15, 1963.

APPENDIX "C"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 19,576

UNITED STATES OF AMERICA,
Appellant,

vs.

THERON C. LYND, Circuit Court Clerk and Registrar, Forrest County, Mississippi; and STATE OF MISSISSIPPI,

Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(July 15, 1963.)

(Advance Sheet, October 7, 1963, Fed. Rep., 2d Series, Vol. 321, p. 26.)

Before BROWN, WISDOM and BELL, Circuit Judges.

PER CURIAM: When this case was first appealed, the Government sought and this Court granted a preliminary injunction pending appeal. *United States v. Lynd*, 5 Cir., 1962, 301 F.2d 818.

Since that time the full record has been filed together with extensive briefs of all parties. For all practical purposes, the issues on the merits of the appeal are the same

as those with which we had to deal earlier. These are set out with sufficient fullness in our prior opinion. Reconsideration of them in the light of the full briefs and record leads us to reaffirm our former conclusions. We therefore hold that there was an appealable order. Likewise, on the merits, we hold that, under appropriate standards of appellate review, the facts were such that it was error for the District Court in effect to deny the application for preliminary injunction.

Since a further trial is required it is necessary that we rule on those procedural points which may have a bearing on the proceedings on remand. As to the problem of pleading, we adhere to our former ruling that "it is clear that there was no justification for the Court's requiring the Government to amend its complaint in this civil rights action to allege specific details of voter discrimination as if this were an action for fraud or mistake under Rule 9, Federal Rules of Civil Procedure." 301 F.2d 818, 822. *Conley v. Gibson*, 1957, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80. The District Court also imposed unjustified restrictions on the scope of the evidence. The evidence to establish a pattern and practice is not confined to the incumbency of Registrar Lynd. Neither is it limited as to the State by the effective date of the 1960 amendments to the Civil Rights Act. 42 USCA §1971. A broad latitude is to be allowed. *United States v. Dogan*, 5 Cir., 1963, 314 F.2d 767; *Kennedy v. Lynd*, 5 Cir., 1962, 306 F.2d 222, cert. denied, 371 U.S. 952, 83 S. Ct. 507, 9 L. Ed. 2d 500; *Alabama v. United States*, 5 Cir., 1962, 304 F.2d 583, aff'd, 371 U.S. 37, 83 S. Ct. 145, 9 L. Ed. 2d 112. So far as the Government's complaint on production of voter records is concerned we doubt that it will any longer be a problem in light of *Kennedy v. Lynd*, 5 Cir., 1962, 306 F.2d 222, cert. denied, 371 U.S. 952, 83 S. Ct. 507, 9 L. Ed. 2d 500.

and the District Court's own subsequent decision in In re Coleman, S.D. Miss., 1962, 208 F. Supp. 199, which we affirmed, *Coleman* v. *Kennedy*, 5 Cir., 1963, 313 F.2d 867.

Consequently, the case must be reversed and remanded for further and not inconsistent proceedings, including the full trial on the merits. As our procedural rulings bear closely on the showing of a right to injunctive relief, all parties, the Government and Defendants alike, are entitled to offer further evidence in the proceedings on remand. The mandate to be issued hereon will provide that the preliminary injunction previously entered by us is continued in full force and effect until such time as the District Court finally disposes of the case. However, as issuance of an injunction by this Court is most unusual, it is more than ordinarily important that the further proceedings in the District Court move with dispatch.[1] The objective is to terminate the preliminary injunction of this Court at the earliest possible time so that all further or other orders will be those of the District Court. This is in keeping with the general proposition that an appeal from the denial or granting of a preliminary injunction should not ordinarily delay the final trial of the case on its merits. *Cf. Wooten* v. *Ohler*, 5 Cir., 1962, 303 F.2d 759, 760; *Barnwell Drilling Co.* v. *Sun Oil Co.*, 5 Cir., 1962, 300 F.2d 298.

REVERSED AND REMANDED.

BELL, Circuit Judge concurring specially:

I concur, with the following additional statement. This court had the power under the All Writs Statute, 28

1. The pendency of the proceedings for civil and criminal contempt against Appellee Lynd as respondent affords no basis for delay in the proceedings on remand since the record of the evidence in the contempt cases is fully closed and those matters have been taken under submission.

U.S.C.A., § 1651, to take the action it took on the former appeal. *United States versus Lynd*, 5 Cir., 1962, 301 F.2d 818. However, in my judgment it was more properly a matter for mandamus. The issue did not go to a denial of temporary relief as such, but to a delay in granting or denying the relief and this court should have spoken to the District Court through a Writ of Mandamus.

This would have afforded the District Court a chance to be heard. It might have avoided the necessity of this court taking the case over prior to a decision in the District Court. It would have avoided the multitudinous handling, by way of contempt hearings and otherwise, since the grant of the original relief by this Court, with no further action having been taken in the interim on the main case in the District Court. This case serves as a classic example of the pitfalls to be encountered, with the attendant disruption and delays in the orderly administration of justice when courts depart from the time-tested processes of law.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By /s/ G. F. Ganucheau
(Seal) Deputy

New Orleans, Louisiana, JUL 15, 1963.

APPENDIX "D"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 19,576

UNITED STATES OF AMERICA,
Appellant,

vs.

THERON C. LYND, CIRCUIT CLERK AND REGISTRAR OF VOTERS OF FORREST COUNTY, STATE OF MISSISSIPPI; STATE OF MISSISSIPPI,
Appellees.

On the Main Appeal

(August 7, 1963.)

Before BROWN, WISDOM and BELL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing filed herein July 23, 1963, and the Motion for Withdrawal and Stay of Mandate filed July 25, 1963, and as amended filed July 29, 1963 and August 5, 1963, are each overruled and denied.

It is further ordered that the stay issued July 25, 1963, be extended for an additional period of twenty (20) days from the date hereof to enable the parties to obtain a stay from the Circuit Justice, the Supreme Court of the United States, or any Justice thereof, pending further review by that Court; unless such a stay is obtained, the several orders of this Court of July 15, 1963, shall be fully complied with.

APPENDIX "E"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 19,576

UNITED STATES OF AMERICA,
Appellant,

vs.

THERON C. LYND, CIRCUIT CLERK AND REGISTRAR OF VOTERS OF FORREST COUNTY, STATE OF MISSISSIPPI,
Appellee.

Proceedings for Civil Contempt

(August 7, 1963.)

Before BROWN, WISDOM and BELL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing filed herein July 23, 1963, and the Motion for Withdrawal and Stay of Mandate filed July 25, 1963, and as amended filed July 29, 1963, and August 5, 1963, are each overruled and denied.

It is further ordered that the stay issued July 25, 1963, be extended for an additional period of twenty (20) days from the date hereof to enable the parties to obtain a stay from the Circuit Justice, the Supreme Court of the United States, or any Justice thereof, pending further review by that Court; unless such a stay is obtained, the several Orders of this Court of July 15, 1963, shall be fully complied with.

APPENDIX "F"

Fourteenth Amendment to United States Constitution

ARTICLE [XIV]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United

States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive, or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. June 25, 1948, c. 646, 62 Stat. 929.

§ 1292. Interlocutory decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

§ 2281. Injunction against enforcement of State statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor, is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968.

Art. I, § II. Constitution of the United States

Section II

1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 244 of the Constitution of Mississippi:

Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the

Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Section 3235 of the Mississippi Code of 1942, Annotated:

Every inhabitant of this state, except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one (21) years old and upwards, who has resided in this State two (2) years, and one year in the election district or city, town, or village in which he offers to vote, and who is able to read and write any section of the constitution of the state and who can

give a reasonable interpretation thereof, and who can demonstrate a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government, and who shall have been duly registered as an elector by an officer of this state under the law thereof, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy, and who has paid all taxes which may have been legally required of him, and which he has had an opportunity to pay according to law, for the two (2) preceding years, and who shall produce to the officers holding the election satisfactory evidence that he has paid such taxes on or before the first day of February of the year in which he shall offer to vote, shall be a qualified elector in and for the election district or city, town, or village of his residence, and shall be entitled to vote at any election held not less than four (4) months after his registration; but any minister of the gospel, in charge of an organized church, or his wife, legally residing with him, shall be entitled to vote after six (6) months' residence in the election district, city, town, or village, if otherwise qualified. No others than those above included shall be entitled, or shall be allowed, to vote at any election; provided, that a person unable to read or write by reason of physical disability shall, if otherwise qualified, nevertheless be entitled to vote, and provided further that any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

Section 3213 of the Mississippi Code of 1942, Annotated (Pocket Part):

A person shall not be registered unless he be able to read and write any section of the constitution of this state

and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; he shall also demonstrate to the county registrar that he is a person of good moral character.

The person applying to register shall make a sworn, written application for registration on a form prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. As originally enacted each provision is and it is further declared to be mandatory and not directory; no application should have been and shall not be approved or the applicant declared qualified to register to vote unless all blank spaces in the application and the oath are properly and responsively filled out by the applicant; and the oath, as such, shall be signed by the applicant; and the application, as such, shall be signed separately by the applicant at the places thereon provided for applicant's signature.

Provided, however, the provisions herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954; except that from and after the effective date of this act no person shall be permitted to register unless he demonstrates to the county registrar that he is of good

moral character as required by the provisions of Section 241-A of the Constitution of Mississippi.

Section 241-A of the Constitution of Mississippi (Pocket Part):

In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Section 3209.6 of the Mississippi Code of 1942, Annotated (Pocket Part):

The state board of election commissioners shall, as soon as practicable and thereafter at such times as it may deem advisable, consistent with the Constitution, prepare a series of application blanks, including the oath of the person offering to register, in compliance with Section 242 of the Constitution of this state, and including blank forms for furnishing of information, showing date of application, which shall be the date of registration if such applicant be approved for registration; name of applicant; age; occupation; where business carried on; if employed, by whom; place of residence; date such residence began; previous place of residence; what oath applicant takes; if more than one person of same name in precinct, by what name applicant wishes to be called; whether applicant has been convicted, and if so, when and where, of any of the crimes referred to in Section 241 of the Constitution of Mississippi, which are bribery, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement and bigamy, and the moral character of applicant; all designed

to test the ability of applicants for registration to vote to read and write any section of the Constitution of this state and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; and to demonstrate to the county registrar that applicant is a person of good moral character as required by Section 241-A of the Constitution of Mississippi. Such applications shall be designed to exhibit the essential facts and qualifications necessary to show that such person is entitled to register and vote. Copies of such application blank forms shall be delivered to the county registrar of each county, and such copies shall be supplied to each county registrar as needed. The oath required by Section 242 of the Constitution shall be administered by the registrar. The board of supervisors is authorized to make proper allowances for office supplies reasonably necessary by this act.

If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another application for registration before any final judgment of decision has been rendered on any prior application, or otherwise waived or abandoned same, the registrar is not required to retain or preserve any record made under the provisions hereof.

Section 3212.7 of the Mississippi Code of 1942, Annotated (Pocket Part):

1. Within ten (10) days after the receipt by the registrar of any application to register to vote and before consideration is given to the sufficiency of the application, the registrar shall deliver for publication in a newspaper

hereinafter described the name and address of such applicant as stated in said application and shall cause same to be published once each week for two (2) consecutive weeks in a newspaper having general circulation in the county where such applicant has applied to register, but if no such newspaper is published in such county, then publication shall be made in some newspaper published in an adjoining or other county but of general circulation in the county of the residence of the applicant.

2. The said name and address shall be published in said newspaper under a heading entitled: "Applicants for registration to vote." When said publication shall have been completed, proper proof of publication shall be furnished to the registrar and same shall be preserved as a record of his office. The cost of the publication and proof thereof shall be paid by the county out of its general fund at the rate for legal notices.

3. If within fourteen (14) days, exclusive of the date of the last publication of the name or names aforesaid, after the date of the last publication, no qualified elector of the county, other than the registrar, shall have challenged, in the manner prescribed by law, the good moral character of applicant and any other requirement which applicant must meet in order to be qualified to register to vote, the registrar shall within a reasonable time, under the circumstances, determine whether applicant has complied with the Constitution and laws of the State of Mississippi to entitle him to register to vote.

4. If any part or portion of this act is held unconstitutional or invalid, such shall not affect any remaining part or portion hereof.

5. This act shall take effect and be in force from and after its passage. (approved May 26, 1962).

Section 3217-01 of the Mississippi Code of 1942, Annotated (Pocket Part):

The sufficiency and the truthfulness of the statements made in the application to register to vote, and the contents thereof, and the good moral character of an applicant to register to vote are material, and this act is adopted to further enforce the requirements to register to vote as set out in the Constitution and laws of the State of Mississippi.

Section 3217-02 of the Mississippi Code of 1942, Annotated (Pocket Part):

Any qualified elector of the county may challenge the good moral character of any applicant and any other requirement of any applicant to vote within fourteen (14) days after the date of the last publication of the name and address of such applicant by filing with the registrar an affidavit in duplicate setting forth facts upon which the challenge is based. Upon the filing of any such challenge the registrar shall within seven (7) days thereafter, exclusive of the date of the filing of such challenge, send to applicant by certified mail, addressed to him at the address shown on the application, one copy of such affidavit, and notice of the date, time and place where the registrar will hold an administrative hearing to determine the sufficiency of the application or challenge.

Section 2111 of the Mississippi Code of 1942, Annotated:

If any registrar appointed by law to register votes, shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by imprisonment in the penitentiary not less than one year nor more than three years.

APPENDIX "G"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 19,576

UNITED STATES OF AMERICA,
Appellant,

v.

THERON C. LYND, CIRCUIT CLERK AND REGISTRAR OF VOTERS OF FORREST COUNTY: STATE OF MISSISSIPPI,
Appellees.

Appeal from the United States District Court for the Southern District of Mississippi

(April 10, 1962.)

Before TUTTLE, Chief Judge, HUTCHESON and WISDOM, Circuit Judges.

TUTTLE, Chief Judge:

This is a motion for an injunction pending an appeal which the United States seeks to have this Court issue following a refusal by the District Court for the Southern District of Mississippi to grant a temporary injunction, which the government sought under the provisions of 42 U.S.C.A. 1971(a) (The Civil Rights Act touching on voting), it being charged in the government's complaint that

Negro applicants for registration in Forrest County, Mississippi, were not being treated "without distinction of race [or] color." The government has filed a notice of appeal from the denial of the temporary injunction. Pending the disposition of this appeal on the merits, the government has filed this motion by which this Court is asked to enjoin the alleged violations of the voting rights of the Negro residents of Forrest County in certain particulars as to which the government claims that it offered undisputed proof. Such a motion for an injunction pending an appeal is to be found in the All-Writs Statute, 28 U.S.C.A. 1651, which provides that:

> "The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Rule 62(g) of the Federal Rules of Civil Procedure also provides that the authority granted to the District Court to grant relief pending an appeal does

> "not limit any power of an appellate court or of a judge or justice thereof . . . to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order, appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered."

The basis of the government's appeal and its subsequent motion for injunction pending appeal is its contention that it has been completely frustrated in an effort to obtain an order of the trial court putting an end to alleged racially discriminatory acts and practices which the government contended in its complaint have deprived Negro citizens of Forrest County of their right to register and to vote without distinction of race or color. The gov-

ernment's efforts to redress the wrongs which it alleges exist in Forrest County commenced on August 11, 1960, ten months prior to the filing of this suit. At that time the United States formally requested that the defendant Lynd, the Registrar of Forrest County, make his registration records available for inspection and copying under Title III of the Civil Rights Act of 1960. These efforts proving fruitless, the government, on January 19, 1961, filed an enforcement proceeding in the District Court to require production of such records. This action also proved fruitless for, although as this Court said in the recent case of Kennedy, Attorney General, v. Bruce, 5 Cir., 298 F.2d 860, an order granting the government the right to make such an inspection should have been issued "as a matter of course," the trial court failed for nearly six months to grant such order. Thereupon, on July 6, 1961, this present suit was filed. Thereafter, on February 15, 1962, the court dismissed the enforcement proceeding as "abandoned." This action was taken, so the trial court said, because after the government filed its suit for injunction on July 6, 1961, and moved for discovery of the official registration records of Forrest County under Rule 34 of Federal Rules of Civil Procedure, the trial court considered that this effort, which it also blocked, superseded the enforcement proceeding.

In the meantime, the instant litigation was delayed from time to time by dilatory motions, including motions to quash the Rule 34 motion, and including motions to make more definite statement, none of which, of course, should stand in the way of a prompt disposition of a motion for temporary injunction.

Briefly stated, the net effect of the several procedural steps taken by the parties is that the trial court finally set down for hearing the motion for temporary injunction on

March 1, 1962, eight months after the suit for injunction was filed, and the posture of the parties was that defendants had objected to, and the trial court had sustained their objections, to giving any access to the records of the Registrar, although at the same time defendants had insisted, and the court had sustained their insistence, on the government's amending its complaint to allege in great detail the name of each applicant who had sought and been denied the right to register, the date of each such application, the name of each Negro who had been refused the right to register, the dates involving any discriminatory mishandling of any Negro registration applications, the names of white people allowed to register who possessed no better qualifications than such Negroes denied the same privilege, and other facts and circumstances showing such discrimination in each of said instances. Moreover, the court had sustained objections by the defendants to the inclusion among the alleged complaining Negro applicants of any who had been denied the right to register or who claimed a discriminatory practice which had occurred prior to February 26, 1959, the beginning of defendant Lynd's term of office. Out of the 63 Negroes whose names the government had supplied by an amendment to the complaint, the trial court required that all but 40 of these be eliminated because the incidents as to which they were identified occurred prior to this date.

The injunction hearing finally came on for trial on March 5th and continued through March 7th. At this time sixteen of the Negroes whose names had been furnished by an amendment to the complaint testified as to experiences with which they were familiar. The government also undertook to prove discriminatory practices by sixteen white witnesses who had been found to be willing to testify in spite of the refusal of the Registrar with approval of the

Court, to make any records of white voters available to the complainant. During the trial it appeared that the defendants actually had in court certain voting records of the Negro witnesses, and the court required that these be turned over to the United States. The court also required that the records touching on the registration experiences of the white witnesses be turned over to the United States, but that they should not be turned over until after the government completed its case in chief. They were actually turned over as to six white witnesses only after the government closed.

Notwithstanding the well-nigh impossible task of showing the true facts, the witnesses produced by the government proved without question that certain serious discriminations had taken place during the term of office of the defendant Lynd. At the conclusion of the presentation by the government of its evidence, the State and the defendant Lynd both reserved the right of cross-examination and deferred such cross-examination. The defendants then declined to put on any evidence but stated that it would take thirty days to be prepared to file answers to the amended complaint and to prepare for introducing defense witnesses. Thereupon the government moved the Court to issue a temporary injunction. Without doing so, and declining either to grant or refuse a temporary injunction, in terms, the court failed to comply with the motion and granted a recess of thirty days to permit the defendants to file their answer and to prepare for proving their defensive case.

At the time the government made its motion for temporary injunction it is plain that the following facts relevant to the complaint that Negro applicants had been denied equal rights to register and vote in Forrest County had occurred:

(1) No Negro had been registered in Forrest County during defendant Lynd's term of office. There were forty Negroes who were named in the amended complaint who attempted to register during this period; sixteen of them testified that they attempted to register on one or more occasions since February 26, 1959, one of them four times. None was registered.

(2) No Negro was permitted even to apply for registration prior to January 31, 1961. Those who attempted to do so were told by one of the deputies that they had to see Mr. Lynd personally, and if they saw Mr. Lynd they were told by him that he couldn't register them, but he gave no reason and gave no time when he would undertake to do so.

(3) Prior to January 31, 1961, most, if not all, of the white applicants were permitted to register without filling out an application form. It is undisputed that many persons were registered without these formalities.

(4) From January 31, 1961, to the present, obviously qualified Negroes were rejected for registration unless the Registrar has some basis for denying the right to register which has not been communicated to them. Among these are five school teachers in the public schools of Hattiesburg or Forrest County, Mississippi; six of them hold baccalaureate degrees from colleges, and three of them have degrees of Master of Arts.

(5) In spite of the government's contention that no named white person during the defendant's entire tenure in office had been rejected for registration, none of the defendants nor their deputies were able to testify to any individual white person who had been rejected.

(6) From the date when the defendant started to use the application forms for white applicants, the defendant's

deputies received applications from white applicants, but refused to receive them from Negro applicants. It was conceded that the Registrar himself was engaged in court as the Circuit Court Clerk two and one-half weeks each month, and was thus frequently unavailable.

(7) The defendant Lynd and his deputies assisted white applicants in filling out their application forms, but refused assistance to Negro applicants. Among the few white registered voters who were found to testify for the government, most of them testified either that they had not been required to fill out forms at all, that they filled them out incorrectly and received aid from the defendant, or were otherwise assisted in completing their registration.

(8) The defendant Lynd refused to give reasons to Negro applicants as to the reason or cause for their rejection, and he required that such applicants wait six months before reapplying for registration, although there is no provision in the statute authorizing such conduct.

(9) All of the sixteen Negro witnesses who testified at the trial were required to write and interpret different provisions of the Mississippi constitution from those provisions of the Mississippi constitution that were submitted to white applicants who testified.[1]

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1. Three of the Negro witnesses testified that they were required to interpret Section 178, the last sentence of which is:

> "In assessing for taxation the property and franchises of corporations having charters for a longer period than ninety-nine years, the increased value of such property and franchises arising from such longer duration of their charters shall be considered and assessed; but any such corporation shall have the right to surrender the excess over ninety-nine years of its charter."

Although we do not here repeat the text of the several sections given to the Negro witnesses and those given to the white wit-

We are not now considering the appeal from the refusal of the trial court to grant the temporary injunction on the merits. We are considering only the motion of the government that we grant a temporary injunction pending the hearing of the appeal. We, therefore, do not have for decision the numerous rulings of the trial court, either in relation to the original enforcement suit seeking access to the records or in the present suit for injunction. However, we cannot fail to comment briefly on the course of the litigation because of its direct bearing on the contention of the government that the refusal of the trial court to grant the temporary injunction justifies our granting this relief pending the appeal. We, therefore, point to the fact that this Court has, in the case of Crum Dinkens v. Attorney General of the State of Alabama, 5 Cir., 285 F.2d 430 and in Kennedy, Attorney General, v. Bruce, supra, clearly laid down the rule that the government is entitled to have an order of the trial court authorizing it to inspect the voting records such as are here involved upon the simple assertion by the Attorney General of the United States that there are reasonable grounds for belief that certain voters are being discriminatorily denied their voting rights in a given county. See 42 U.S.C.A. 1971(c). We have thus held that such allegation need not be enlarged or expanded by supplying detailed information such as was required by the Court in the case on appeal. Likewise, it is clear that there was no justification for the court's requiring the government to amend its complaint in this civil rights action to allege specific details of voter

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nesses. a reading of them demonstrates beyond any question that by any objective standard those supplied to the Negro applicants were longer, more complicated, and more difficult. Ten white witnesses testified that they were not required to write or interpret any provision of the Mississippi constitution.

discrimination as if this were an action for fraud or mistake under Rule 9, Federal Rules of Civil Procedure. These matters are commented on not as a final adjudication of the legal points involved, since they have not been briefed and are not now before us on appeal, but because they are relevant in our considering the need at this time, after nearly nine months following the filing of the suit, to enjoin such discriminatory practices as now appear to be fully proved.

The first objection of the defendants to our granting this relief is that the trial judge did not enter a formal order "refusing" a temporary injunction. He simply failed to do so, although the government made a formal motion during and at the end of its presentation of evidence for the issuance of such an injunction. The movant, under such circumstances, was clearly entitled to have a ruling from the trial judge, and since he did not grant the order his action in declining to do so was in all respects a "refusal," so as to satisfy the requirements of Section 1291. We hold, therefore, that the failure of the trial court to grant the temporary injunction constituted an "interlocutory order of the district court . . . refusing . . . an injunction." Such order is appealable.

The defendants' next contention is that it would be entirely inappropriate for the court at this time, as they claim it would have been for the trial court at the end of plaintiff's testimony, to grant a temporary injunction, because the State has not filed its answer and has not put on its proof. This contention entirely overlooks the nature of a temporary injunction, which is a writ of the trial court, or, in this instance, of an appellate court, issued to protect the rights of any person moving for it upon his making a showing that he is entitled to it. The grant of a temporary injunction need not await any procedural steps

perfecting the pleadings or any other formality attendant upon a full-blown trial of the case. The defendant may, of course, make such counter showing as it deems wise or necessary to meet such proof as is produced by the moving party. Where, however, as is here the case, the plaintiff made a clear showing that rights which it sought to vindicate were being violated, and and that no response or counter-proof would be available for some considerable period after these rights should have been, but had not been, taken under consideration by the trial court, the plaintiff has satisfied every requirement for the granting of temporary relief pending a final adjudication of the appeal.

We conclude that the likelihood that the court's refusal to grant the temporary injunction will be reversed as an abuse of discretion is sufficiently great that we are warranted in protecting the rights of the Negro registrants pending a decision on this issue by this Court.

Therefore, pending a final determination of the appeal now pending in this Court, the defendants, their agents, employees, successors, and all persons in concert with them are hereby enjoined from engaging in discriminatory acts and practices based on race in the registration for voting in Forrest County, Mississippi, and they are expressly enjoined from:

(1) Denying Negro applicants the right to make application for registration on the same basis as white applicants;

(2) Failing to process applications for registrations submitted by Negro applicants on the same basis as applications submitted by white applicants;

(3) Failing to register and to issue registration cards to Negro applicants on the same basis as white applicants;

(4) Denying Negro applicants the right to be registered by the same office personnel and with the same expedition and convenience as are being permitted to white applicants, and from failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or heretofore have given to white applicants under similar circumstances;

(5) From administering the constitutional interpretation test to Negro applicants by including as sections to be read and interpreted any sections other than those which at the time of the trial had been used for submission to white applicants;

(6) From requiring rejected Negro applicants to wait any different period before reapplying for registration than may be authorized under the laws of Mississippi and other than is required of white applicants.

In view of the immediate pendency of termination of registration proceedings prior to an early election, it is ordered that this injunction shall be effective immediately, and that the judgment and order of this Court be transmitted forthwith to the Clerk of the District Court for the Southern District of Mississippi, and that the Clerk of this Court send a certified copy hereof to each party defendant, said service to be made upon counsel of record.

A true copy.

Test: Edward W. Wadsworth
Clerk, United States Court of Appeals, Fifth Circuit

By s Clara R. James
(Seal) Deputy

New Orleans, Louisiana April 10, 1962